

Remarks

Claim listing

Claims 1, 2 and 4-7 are pending in the application. No amendments to the claims are made at this time.

Claim rejections under 35 U.S.C. §102(b)

Claims 1 and 4-7 were rejected over U.S. Patent No. 5,645,723 to Fujishiro, cited in an earlier office action. The rejection is respectfully traversed.

With respect to the independent claim 1, the Examiner alleged that Fujishiro teaches every one of the claim elements a) through h). However, close examination of the Fujishiro reference reveals that at least one element is entirely missing. Specifically, claim 1 teaches step h): "closing the collecting unit with closure unit." As pointed out in the prior response, Fujishiro lacks the "closure unit" on the collecting unit. For collecting the sample, Fujishiro teaches recovery tubes (49), each tube having its own cap (closure)¹. "Recovery tubes 49 are held in those holes c and *caps for recovery tubes* 49 are held in holes d made near holes c." (col. 4, lines 24-26). The tubes 49 with their individual caps are clearly illustrated on Figure 7 (upper portion).

In their disclosure, the Applicants expressly criticize the individual closing of collecting tubes as inferior prior art. A tube with a cap identical to that of Fujishiro is illustrated on the Applicants' Figure 1, entitled "Prior Art." Instead of the prior art multiple tubes with individual caps, the Applicants utilize one closure unit for the entire collecting unit:

In particular, the system differs from the prior art in that a *separate closure unit* is used, which is placed on the collecting unit to seal the collecting vessels. Whereas *individual vessels are used in the prior art* (see e.g. Figure 1), which have to be individually manipulated by the user. [...] A particular advantage of the invention is that the collecting unit with its opened collecting vessels can be closed in one handling step.

(p. 10, lines 11-18). Collecting tubes in Fujishiro ("recovery tubes 49") are clearly "individual vessels" which need to be individually manipulated, and thus lack the advantageous feature of the present invention.

The Examiner alleged that Fujishiro teaches a closing unit and generally cited col. 2, line 58 to col. 8, line 48 of Fujishiro. This excerpt contains most of the Detailed Description of the

¹ In claim 1, "collecting unit" is described as "collecting unit with collecting vessels," see line 11. Therefore an individual tube of Fujishiro is not a "collecting unit."

Fujishiro invention. Close reading of the description reveals that the only mention of collecting vessels is the reference to a series of “recovery tubes 49,” as cited on the preceding page. As explained above, the tubes 49 have individual caps and thus lack a “closure unit” that would close the entire collecting unit.

Because Fujishiro lacks at least one element of the independent claim 1, the §102(b) rejection may not be sustained. Withdrawal of the rejection is respectfully requested.

The remaining claims 4-7 depend upon claim 1, and therefore incorporate all the limitations of that claim. For the reasons that apply to claim 1, withdrawal of the §102(b) rejections of the dependent claims over Fujishiro is also respectfully requested.

Claim rejections under 35 U.S.C. §103

Claims 1, 2 and 4-7 were rejected over a German WIPO publication WO 96/31781 by Bienhaus (as translated by worldlingo.com) in view of Fujishiro. The rejection is respectfully traversed.

The Examiner alleged that the primary reference Bienhaus teaches all of the steps a) through h) of the independent claim 1. Therefore, with respect to claim 1, it is not clear why Fujishiro was cited as a secondary reference for the §103 rejection. However, as explained below, both Bienhaus and a combination of Bienhaus with Fujishiro lack at least one element of claim 1 and any suggestion of the missing element.

As pointed out in the response to the prior office action, Bienhaus lacks at least one element of claim 1: step h) “closing the collecting unit with a closure unit.” This argument was found persuasive and the prior rejection over Bienhaus has been withdrawn. The Applicants thank the Examiner for withdrawing the prior rejection.

The new rejection relies on pages 6-8 of the translation of the Bienhaus reference prepared by the Examiner. However, the translation is in complete agreement with the Applicants’ prior arguments. For example, on page 6, the Examiner underlined a phrase “during the incubation, *the* sample container is preferentially sealed by *a* cover B.” In other words, each individual container has its own cover. (For example, Figure 3 shows container A with a cover B.) As pointed out in relation to Fujishiro, an individual container is not a “collecting unit,” because the claim recites “collecting unit with collecting vessels.” Bienhaus teaches individual containers in a unit, e.g. unit 10 on Figs. 1 and 2. Bienhaus clearly lacks the “closure unit” that would close all the vessels within the unit.

As explained in the preceding section, Fujishiro does not fill the gap in Bienhaus, as it also lacks the "closure unit" element. Because the hypothetical combination of Bienhaus and Fujishiro lacks at least one element of the claim or any suggestion of the missing element, the §103 rejection over Bienhaus and Fujishiro may not be sustained. Reconsideration and withdrawal of the rejection of claim 1 over Bienhaus in view of Fujishiro is respectfully requested.

The remaining claims 2 and 4-7 depend ultimately upon claim 1, and therefore incorporate all the limitations of that claim. For the reasons that apply to claim 1, withdrawal of the rejections of the dependent claims over Bienhaus in view of Fujishiro is also respectfully requested.

Conclusion:

In view of the above, Applicants believe that all claims now pending in this Application are in condition for allowance. It is believed that no fees are due at this time, however, the Commissioner is authorized to charge any fee deficiency, or credit any overpayment, to Deposit Account No. 50-0812.

If the Examiner believes that a telephone conference would expedite prosecution of this application, the examiner is invited to call the undersigned directly at 925-730-8567.

Respectfully submitted,

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Olga Kay (Reg. No. 57,459)

Roche Molecular Systems, Inc.
4300 Hacienda Drive
Pleasanton, CA 94588
Tel. 925-730-8567
Fax 925-225-1128